

PROPOSED:  
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HIGHER EDUCATION

COMMISSION ON HIGHER EDUCATION

Rules Implementing the Higher Education Capital Improvement Fund Act

Proposed Readoption with Amendments: N.J.A.C. 9A:12

Authorized By: Commission on Higher Education, Francis J. Mertz, Chair

Authority: N.J.S.A. 18A:72A-80 and P.L. 1999, c. 217

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2005-174

Submit written comments by July 15, 2005 to:

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The agency proposal follows:

## Summary

On September 21, 1999, the Higher Education Capital Improvement Fund Act (P.L. 1999, c. 217) was enacted, establishing the \$550 million Higher Education Capital Improvement Fund in the New Jersey Educational Facilities Authority (EFA). Grants from the fund help New Jersey four-year colleges and universities address deferred maintenance and other capital needs on their campuses.

The primary purpose of the capital improvement fund is to finance the repair of academic (that is, instructional, laboratory, communications, or research) and administrative facilities. The statute also provides for alternative uses of fund moneys under certain circumstances, such as replacing a building when to do so is less costly than repairing it, and improving, expanding, constructing, or reconstructing academic facilities or technology infrastructure if the institution's Federal grant recoveries will be maximized or if deferred maintenance is otherwise covered. A 2002 amendment to the statute allows up to 20 percent of a grant to be used in student support facilities for deferred maintenance or for improvement, expansion, construction, or reconstruction. (The Act originally allowed up to five percent and only to remedy code defects.)

EFA issues bonds to capitalize the fund, which is renewable upon approval by the State Treasurer. The Commission on Higher Education (Commission), in consultation with EFA, promulgates the implementing rules, which specify approval processes for institutional projects supported by the capital improvement fund and ensure that the moneys are distributed consistent with the intent of the enabling statute. The Commission has approved grants for virtually all of the initial allocations. With the rule chapter set to expire on October 14, 2005, pursuant to N.J.S.A. 52:14B-5.1c, the Commission proposes reoption, to be ready in the event of renewal. Amendments are proposed to reflect the 2002 statutory changes that increase allowable funding for student support facilities. Also, the statute requires the Commission to allocate moneys from new bond issues, and amendments are proposed removing obsolete language regarding the original institutional allocations. Additional clarifying language is also proposed.

The rules for the capital improvement fund are organized as follows:

N.J.A.C. 9A:12-1.1 sets forth the chapter's purpose and authority; no amendments are proposed.

N.J.A.C. 9A:12-1.2 provides definitions pertinent to the rules; no amendments are proposed.

N.J.A.C. 9A:12-1.3 currently delineates the statutory allocation of the initial \$550 million and specifies how future allocations and reallocations will be determined. New, summary language regarding the original allocations is proposed at N.J.A.C. 9A:12-1.3(b) to replace the specific provisions at current N.J.A.C. 9A:12-

1.3(a) and (c). Amendments are proposed at N.J.A.C. 9A:12-1.3(d) and (e), which concern reallocation of balances, to reflect these proposed changes. The Commission's authority to allocate any new capital improvement fund moneys is proposed for recodification from N.J.A.C. 9A:12-1.3(g) to 1.3(c); amendments are proposed for consistency with similar provisions in the rules for other capital programs.

N.J.A.C. 9A:12-1.4 presents criteria the Commission will use in reviewing proposals for grants from the capital improvement fund and requires institutions to pay portions of the debt service on the bonds financing the grants. Amendments are proposed at N.J.A.C. 9A:12-1.4(a)3ii to reflect the statutory changes regarding funding for student support facilities. Amendments are proposed at N.J.A.C. 9A:12-1.4(a)3iii to incorporate statutory language.

N.J.A.C. 9A:12-1.5 delineates the grant application process, including the required contents of proposals, and specifies the four exceptions to the general criteria for funding eligibility that the statute provides. Amendments are proposed at N.J.A.C. 9A:12-1.5(d) to reflect the changes regarding student support facilities and at N.J.A.C. 9A:12-1.5(g) to remove obsolete language.

N.J.A.C. 9A:12-1.6 delineates the grant authorization process, and N.J.A.C. 9A:12-1.7 contains annual reporting requirements; no amendments are proposed.

As the Commission has provided a 60-day comment period on this notice of proposal, this notice is exempted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

#### Social Impact

The rules proposed for readoption with amendments maintain implementation of the capital improvement fund program. More than 370,000 students are enrolled in New Jersey colleges and universities. These students need well-maintained campus facilities to be competitive with their peers in today's global society. The improvement fund helps the institutions preserve and enhance classrooms, laboratories, and other existing facilities on which maintenance has been deferred, enabling them to upgrade buildings to meet student and faculty needs. The 12 senior public colleges and universities and the 14 institutions eligible for aid under the Independent College and University Assistance Act may apply for grants from the fund. The proposed amendments remove obsolete language and update the rules to reflect statutory changes.

#### Economic Impact

Higher education plays a vital role in the economic development of the nation and the State by providing education and training for the workforce of the future, by advancing knowledge and technology through research, and by providing lifelong

learning opportunities for all citizens. There is a crucial need to repair and renovate existing campus facilities in order to preserve and enhance the higher education system and help ensure that New Jersey colleges and universities can continue to support the State's economy. The Higher Education Facilities Trust Fund, the Equipment Leasing Fund, and the Higher Education Technology Infrastructure Fund have helped prepare New Jersey institutions to meet educational demands, which helps the State compete in the global marketplace. Significant State funding for higher education deferred maintenance needs is an investment in strengthening New Jersey's competitiveness in a global and highly technological economy. The rules proposed for readoption with amendments maintain implementation of the program that focuses on deferred maintenance.

#### Federal Standards Statement

The rules proposed for readoption with amendments are not subject to a Federal standards analysis under Executive Order No. 27 (1994) because the Higher Education Capital Improvement Fund was established by New Jersey legislation, is wholly supported by State appropriations, and is not subject to any Federal requirement or standards.

#### Jobs Impact

The rules proposed for readoption with amendments will not result in the generation of any jobs over the long term, because the rules implementing the Higher Education Capital Improvement Fund govern only the required process for eligible institutions to receive approval for projects supported with improvement fund moneys. There may be short-term job increases associated with the funded projects. The rules proposed for readoption with amendments will not result in the loss of any jobs.

#### Agriculture Industry Impact

The rules proposed for readoption with amendments will have no impact on the agriculture industry.

#### Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the rules proposed for readoption with amendments do not impose requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules pertain strictly to public and to publicly funded independent colleges and universities in New Jersey, none of which qualify as a small business because all have at least 100 full-time employees.

### Smart Growth Impact

The rules proposed for readoption with amendments will have no impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 9A:12.

Full text of the proposed amendments follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

CHAPTER 12.  
RULES IMPLEMENTING THE  
HIGHER EDUCATION CAPITAL IMPROVEMENT FUND ACT

9A:12-1.3 Allocation of funds

[(a)The grants from the capital improvement fund shall be allocated initially as follows:

1. \$175,000,000 for capital improvement at the State colleges/universities;
2. \$169,000,000 for capital improvement at Rutgers, The State University;
3. \$95,000,000 for capital improvement at the University of Medicine and Dentistry of New Jersey;
4. \$61,000,000 for capital improvement at the New Jersey Institute of Technology; and
5. \$50,000,000 for capital improvement at private institutions of higher education.]

Recodify existing (b) as (a). (No change in text.)

(b) The initial allocations from the fund among the institutions were made by the Amending Act and the Commission on Higher Education.

[(c) The Commission shall, by resolution, allocate funds to individual State colleges/universities and private institutions of higher education within the sector allocations in (a) above.]

(c) Pursuant to the Amending Act, the Commission shall determine the allocation of moneys available if the State Treasurer authorizes new bonds as a result of the retirement of bonds previously issued by the Authority.

(d) The Commission may reallocate any balance in the amounts [authorized in (a) above for which] allocated if the Commission has not approved a grant within 24 months [after the effective date of these rules or within 24 months of subsequent] of the date of the allocations made by the Commission.

(e) No reallocation shall be made pursuant to (d) above if:

1. The Commission has received the grant application within 24 months of the allocation;

2. – 3. (No change.)

(f) (No change.)

[(g)The Commission shall determine the allocation of moneys available if the State Treasurer authorizes bonds for additional grants to be issued by the

Authority.]

#### 9A:12-1.4 Funding criteria

(a) The Commission shall approve a grant from the capital improvement fund providing the institution meets the following criteria. The institution must:

1. – 2. (No change.)

3. Use the funds for renewal or renovation of instructional, laboratory, communication, research, and administrative facilities, or for the following alternatives provided for by law:

i. (No change.)

ii. Renewing and renovating or improving, expanding, constructing, and reconstructing student-support facilities [for fire code, health-safety code, and other State and Federal code defects] provided that no more than [five] 20 percent of an institution's total grant is so used;

iii. Improving, expanding, constructing, and reconstructing instructional, laboratory, communication, and research facilities, or technology infrastructure provided that the institution demonstrates that all renewal and renovation at instructional, laboratory, communication, research, or administrative facilities is completed or is accounted for through other funding sources; or

iv. (No change.)

4. (No change.)

(b) (No change.)

#### 9A:12-1.5 Grant application

(a) – (c) (No change.)

(d) For any project that involves student support facilities, the proposal shall include a budget indicating that no more than [five] 20 percent of the institution's total grant shall be used for this purpose [and shall identify the specific State or Federal fire, health-safety, building, or other codes that will be remediated].

(e) – (f) (No change.)

(g) Only projects that incurred [or will incur] expenses after July 1, 1999 are eligible for approval provided that the projects meet the requirements of the law and N.J.A.C. 9A:12-1.4; only project expenses incurred after July 1, 1999 shall be eligible for reimbursement.

(h) (No change.)